

**Principles for Designation of the Delta Protection Commission as  
the Regional Agency for Land Use Oversight, Flood Control, and Emergency  
Preparedness in the Delta:**

*A Proposal to Implement the Delta Plan  
Under Development by the Delta Stewardship Council*

## **I. Overview**

The purpose of these principles is to outline possible roles and responsibilities for the Delta Protection Commission (DPC) with respect to land use oversight, regional flood control, and emergency preparedness coordination within the Delta. These responsibilities build upon the DPC's existing functions as defined by statute and work in coordination with the Delta Stewardship Council (DSC) in the pursuit of the co-equal goals for the Delta established by the California Legislature.

Key Delta stakeholders, who would be affected by the DPC's execution of the proposed responsibilities, are represented in the current composition of the DPC, avoiding the need to create a new agency or bureaucratic processes. As noted below, in addition to the need to incorporate the elements of these principles into the Delta Plan, some aspects of this proposal would require additional legislative action for implementation.

## **II. Land Use Review in the Delta**

The Delta Plan should provide clarity of what is, and what is not a "covered action" and what is a "significant" impact on the Delta. Clarity and definition of significant impact would allow for local agencies to review local land use decisions within the Primary and Secondary Zones of the Delta for applicability of and consistency with Delta Plan policies. Without clarity as to what is or what is not a covered action or definition of what is a significant impact, the application process should start with the DSC where an action can be pre-screened to determine whether the proposed application is a "covered action". (This review process could be delegated to the DPC.) The applicant would then initiate an application process with the local land use agency after the preliminary determination by the DSC.

## **Implementation**

### *1. Define geographic area affected.*

The DSC should define the area within which land use decisions must be consistent with the Delta Plan. If covered actions are to include land use proposals in the Secondary Zone and if it is proposed that the DPC be the appellate body with respect to land use in the Secondary Zone, then legislative changes to the jurisdiction of the DPC would be necessary.

### *2. Direct local land use authorities to conduct initial review of projects for covered action status.*

Local agencies receiving applications for projects within the affected geographic area shall conduct an initial screening for potential covered actions, as defined in the Delta Plan, using a tiered approach.

- a. **Ministerial Actions.** Ministerial actions that are consistent with the local jurisdiction's existing zoning and General Plan that is consistent with the Resource Management Plan (RMP) shall be considered categorically exempt from further review for consistency with the Delta Plan.
- b. **Additional Categorical Exemptions.** Additional specific project types should be considered categorically exempt, when consistent with a local General Plan that is consistent with the Delta Plan, including the following types of projects which are excluded from the definition of "development" in the DPC's RMP.
  - i. *All farming and ranching activities, with respect to the operations, as specified in subdivision (e) of Section 3482.5 of the Civil Code.*
  - ii. *The maintenance, including the reconstruction of damaged parts, of structures, such as marinas, dikes, dams, levees, riprap (consistent with Chapter 1.5 (commencing with Section 12306) of Part 4.8 of Division 6 of the Water Code, breakwater, causeways, bridges, ferries, bridge abutments, docks, berths, and boat sheds. "Maintenance" includes, for this purpose, the rehabilitation and reconstruction of levees to meet applicable standards of the United States Army Corps of Engineers or the Department of Water Resources.*

- iii. *The construction, repair, or maintenance of farm dwellings, buildings, stock ponds, irrigation or drainage ditches, water wells, or siphons, including those structures and uses permitted under the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part I of Division I of Title 5 of the Government Code).*
  - iv. *The construction or maintenance of farm roads, or temporary roads for moving farm equipment.*
  - v. *The dredging or discharging of dredged materials, including maintenance dredging or removal, as engaged in by any marina, port, or reclamation district, in conjunction with the normal scope of their customary operations, consistent with existing federal, state, and local laws.*
  - vi. *The replacement or repair of pilings in marinas, ports, and diversion facilities.*
  - vii. *Projects within port districts, including, but not limited to, projects for the movement, grading, and removal of bulk materials for the purpose of activities related to maritime commerce and navigation.*
  - viii. *The planning, approval, construction, operation, maintenance, reconstruction, alteration, or removal by a state agency or local agency of any water supply facilities or mitigation or enhancement activities undertaken in connection therewith.*
  - ix. *Construction, reconstruction, demolition, and land divisions within existing zoning entitlements, and development within, or adjacent to, the unincorporated towns of the Delta, as permitted in the Delta Area Community Plan of Sacramento County and the general plan of Yolo County, authorized prior to January 1, 1992.*
  - x. *Exploration or extraction of gas and hydrocarbons.*
  - xi. *The planning, approval, construction, repair, replacement, alteration, reconstruction, operation, maintenance, or removal of oxidation and water treatment facilities owned by the City of Stockton or the City of Lodi, or facilities owned by any local agency within or adjacent to the unincorporated towns of the Delta consistent with the general plan of the County of Sacramento or the County of Yolo, as the case may be.*
- c. **Potentially Covered Actions.** For legislative actions or quasi-judicial actions and other project types not qualified under a. or b., above, the responsible local agency shall conduct an initial “checklist” procedure (similar to CEQA environmental

checklist) to determine if the project meets the criteria to qualify as a “covered action” as defined in the Delta Plan. If the project does not meet the criteria for a covered action, a Negative Declaration may be issued and the project shall be considered a non-covered action. The process shall provide for reporting to the DPC to allow for review and over-ride of a local agency’s determination that a project is not a covered action.

If a local agency finds that the project is a covered action, the local agency shall conduct a review to determine if it meets criteria for a project with a potentially significant impact, as follows:

- i. **Covered Actions with Potentially Significant Impacts.** While some projects may be considered covered actions, they may have less than significant impacts, meaning that they do not require review for consistency with the Delta Plan. If the local agency determines that a project meets any of the following thresholds of significance, it must find that the covered action has potentially significant impacts and the local agency shall refer the project to the DPC for review of consistency with the Delta Plan:
  1. The project would adversely impact flood safety in the Delta or surrounding communities (e.g. project would cause an increase in the amount of floodwaters flowing into the Delta during storm events or increase vulnerability of people or property to damage from flooding).
  2. The project would create a reduction in the amount and/or quality of cultivated agricultural land within the Delta.
  3. The project would adversely impact recreation, tourism, or habitat efforts (including opportunities) in the Delta.
  4. The project would have a measureable adverse impact on the infrastructure in the Delta, including the transportation system, levees or utilities.
- ii. **Covered Actions with Less Than Significant Impacts.** If the local agency finds that the project does not meet any of the criteria listed above, the local agency shall report this finding to the DPC. The process shall provide for reporting to the DPC to allow timely review and over-ride in cases where DPC disagrees with the local agency’s finding of less than significant impacts. In the absence of DPC over-ride, the local agency may take action on the project according to its normal procedures.

### *3. DPC Review of Covered Actions with Potentially Significant Impacts*

Before a local agency considers approving a project involving a covered action with potentially significant impacts, the DPC shall review the project to determine whether it is consistent with the Delta Plan and the RMP, as appropriate. The DPC shall report its action to the DSC and to the local agency. If the DPC finds the project is inconsistent with the Delta Plan and/or the RMP, the local agency may not approve it.

### *4. Appeal and Protest Process*

Any interested party may appeal a local agency decision or a DPC decision on a land use matter to the DSC. The DSC shall have the authority to make the final determination on covered action status and consistency with the Delta Plan. Any interested party may file a protest with the DPC within 30 days of a approval by a local agency for a project that was determined by a local agency to be a non-covered action (i.e., approved by the local agency as categorically exempt or through negative declaration) or to be a potentially covered action that would have less than significant impacts. Any interested party may file a protest with the DSC within 30 days of action by the DPC.

### *5. Funding Required*

Funding for functions performed by DPC and/or DSC related to project reviews will come from a combination of general agency administrative budgets and from application fees. The Delta Plan should endorse collection of fees from applicants for consistency reviews.

### *6. Related Actions*

Once the DSC adopts the Delta Plan, within 6 months, the DPC shall conduct a review of the RMP and undertake revisions necessary to ensure consistency between the RMP and the Delta Plan.

## **III. Flood Control and Emergency Preparedness in the Delta**

The following principles involve establishing the DPC as the regional flood control and emergency preparedness coordinator for the Delta, consistent with Water Code Section 85020(g). This would empower DPC to assist Delta reclamation districts, cities, and counties with flood control planning, and emergency preparedness and response. The DPC would maintain regional elements of the planning and response system; *not* take over existing functions, and *not* take on actual response functions and authorities. Objectives include prioritizing regional flood control needs, bringing

non-project levees to PL 84-99 standards, and establishing and maintaining a Delta regional flood response coordination function to augment, not supplant, the existing the SEMS system.

### ***Implementation***

- 1. Designate the DPC as the Delta Flood Control Agency.*

This will become a function within the DPC, in addition to DPC's current functions.

- 2. Establish staffing within the DPC to handle flood control and emergency response coordination duties.*

Augment DPC staff with flood control expertise dedicated to regional flood control duties under the direction of the DPC Executive Director. Duties would include working with local agencies in implementing and updating a Delta Flood Protection Plan in coordination with the Central Valley Flood Protection Board development of a Central Valley Flood Protection Plan, maintaining flood contingency maps, establishing and maintaining regional flood fight resource stockpiles, establishing flood fight unified commands (Regional Delta Response System, see below), conducting public outreach and education, facilitating training for local agencies, and administering the Flood Emergency Response Fund (see below).

- 3. Secure an ongoing funding mechanism for flood control activities.*

The Delta Plan should endorse the creation of a Delta Flood Assessment program that would ensure that all flood protection beneficiaries, including private property owners, state and local government agencies, and owners of private utilities and private infrastructure to pay a fair share for the capital costs and ongoing operation and maintenance costs for Delta levee improvements and other related flood protection activities. This could be accomplished through expanded assessment authority or by contract with state agencies and other non-property owners who benefit from flood control activities and are not currently subject to assessments or contributions to local reclamation districts, counties, or cities for flood control.

- 4. Prioritize regional flood control needs.*

The DPC shall prioritize Delta flood protection needs, in coordination with local reclamation districts and local governments and allocate any available region-based funds to local agencies in order to make improvements to address regional flood control needs.

*5. Establish Regional Delta Response System using bond funds, implementing SB 27/SB1443 Task Force recommendations.*

The DPC will take the lead in establishing a regional response system to coordinate the efforts of existing agencies, the Army Corps of Engineers, and FEMA; augmenting, not supplanting the existing SEMS structure. The purpose of the regional system will be to provide coordination at the regional level to facilitate effective collaboration and coordination between the five Delta Counties.

*6. Funding Required.*

The Delta Plan should advocate for allocation of \$10 million for planning and implementation and \$100 million in water bond funds to a Delta Emergency Flood Response Fund, for Delta levee improvements, emergency preparedness projects, and emergency response capabilities, to be spent consistent with the Delta regional priorities.

*7. Legislative Action Required.*

Legislative action may be required to authorize the designation of the DPC as a regional flood control agency and regional emergency preparedness coordinator.